

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
20TH JUDICIAL DISTRICT, DAVIDSON COUNTY

AJ CAPITAL MANAGEMENT, LLC d/b/a AJ)
CAPITAL PARTNERS and NASHVILLE PHASE)
II PROPERTY HOLDER LLC)

Petitioners,)

v.)

No. 22-1065 -I

ALL INTERESTED PERSONS HAVING ANY)
RIGHT OR EASEMENT OR OTHER INTEREST,)
RIGHT IN, OR INCIDENT OR APPURTENANT)
TO CERTAIN HUMAN REMAINS LOCATED)
ON A PORTION OF THE PROPERTY)
FORMERLY IDENTIFIED AS 1131 4TH AVENUE)
SOUTH, NASHVILLE, TN 37210 (TAX MAP 105-)
03, PARCEL 331, DAVIDSON COUNTY)
ASSESSOR'S OFFICE) AND AS 1137 4TH)
AVENUE SOUTH, NASHVILLE, TN 37210 (TAX)
MAP 105-03, PARCEL 349, DAVIDSON COUNTY)
ASSESSOR'S OFFICE), AND CURRENTLY)
IDENTIFIED AS 0 4TH AVENUE SOUTH,)
NASHVILLE, TN 37210 (PARCEL ID)
105030Y00100CO, DAVIDSON COUNTY)
ASSESSOR'S OFFICE), 0 4TH AVENUE SOUTH,)
NASHVILLE, TN 37210 (PARCEL ID)
105030Y002, DAVIDSON COUNTY ASSESSOR'S)
OFFICE) AND 0 4TH AVENUE SOUTH,)
NASHVILLE, TN 37210 (PARCEL ID)
105030Y90000CO, DAVIDSON COUNTY)
ASSESSOR'S OFFICE) AND CONVEYED TO)
NASHVILLE PHASE II PROPERTY HOLDER)
LLC, BY SPECIAL DEED OF RECORD AT)
INSTRUMENT NO. 20190312-0022494,)
REGISTER'S OFFICE FOR DAVIDSON)
COUNTY, TENNESSEE,)

Respondents.)

PETITION TO RELOCATE REMAINS
AND TERMINATE BURIAL GROUNDS

Petitioners, AJ Capital Management, LLC d/b/a AJ Capital Partners and Nashville
Phase II Property Holder LLC (collectively, the "Petitioners") request that this Court, pursuant to

Tenn. Code Ann. § 46-4-101, *et seq.*, enter an Order allowing Petitioners to have certain artifacts and remains buried on the property described hereafter removed and relocated. In support of this Petition, Petitioners allege as follows:

1. Nashville Phase II Property Holder LLC is the owner of property located in Davidson County, Tennessee, conveyed by Outpost Nashville Owner LLC to Nashville Phase II Property Holder LLC by Special Warranty Deed of record at Instrument Number, 20190312-0022494, Register's Office for Davidson County, Tennessee. At the time of the conveyance of the property, the property was identified as 1131 4th Avenue South, Nashville, Tennessee 37210 (Tax Map 105-03, Parcel 331, Davidson County Assessor's Office) and 1137 4th Avenue South, Nashville, Tennessee 37210 (Tax Map 105-03, Parcel 349, Davidson County Assessor's Office). Following the recording of the Declaration Establishing the Nashville Warehouse Company Land Condominium of record at Instrument Number, 202206929-0075337, Register's Office for Davidson County, Tennessee, the property is now identified as 0 4th Avenue South, Nashville, Tennessee 37210 (Parcel ID 105030Y00100CO, Davidson County Assessor's Office), 0 4th Avenue South, Nashville, Tennessee 37210 (Parcel ID 105030Y002, Davidson County Assessor's Office) and 0 4th Avenue South, Nashville, Tennessee 37210 (Parcel ID 105030Y90000CO, Davidson County Assessor's Office). The property is more fully described in Exhibit A, and further described and depicted in Exhibit B, which are attached hereto and incorporated herein by reference (the "Property").

2. Respondents are "Interested Persons" as defined in Tenn. Code Ann. § 46-4-102, and the identity of such respondents is unknown and not ascertainable upon diligent inquiry. As a result, Petitioners request the issuance of an Order of Publication pursuant to Tenn. Code Ann. § 21-1-204.

3. Petitioners are in the process of developing and constructing a mixed-use development on the Property.

4. During the course of excavating the Property for the placement of structural foundation caissons, Petitioners discovered burials containing human remains on the Property (the “Burials”). It is believed that the remains are estimated to date to the early nineteenth century and are not of Native American origin.

5. Pursuant to Tenn. Code Ann. § 11-6-107(d) the Division of Archaeology of the Tennessee Department of Environment and Conservation (the “Division of Archaeology”) has been notified and has inspected the Burials. The Petitioners have communicated extensively with representatives of the Division of Archaeology to advise them of Petitioners’ development plans and to seek their input as to appropriate ways to deal with the Burials.

6. Despite considerable time and effort directed at development alternatives to allow the Burials to remain undisturbed, it has been determined that the limited area within which to locate necessary developments requires that Petitioners seek authority to remove and relocate the Burials that have been recovered in accordance with Tenn. Code Ann. § 46-4-101 *et seq.*

7. Pursuant to the referenced section of the Tennessee Code, Petitioners allege that the Property is unsuitable for use as a burial ground or cemetery for the following reasons:

a. The Burial has been abandoned and not maintained as a cemetery or burial ground for over a hundred years; and

b. The planned construction activities and ultimate use of the Property in the area of the Burial is inconsistent with due and proper reverence for the Burial.

8. Petitioners will work with the Division of Archaeology and the representatives of the Metropolitan Government of Davidson County (“Metro”) to develop and

implement appropriate arrangements for the reburial of the recovered remains and will proceed in accordance with all applicable laws, regulations and with due care, respect and decency.

9. Petitioners further allege that there are adequate and appropriate areas within Davidson County for the relocation and re-interment of the Burial. Petitioner is working to reach an agreement with the Division of Archaeology and representatives of Metro for the relocation and re-interment of the Burials at the Metro City Cemetery, located at 401 Oak Street, Nashville, Tennessee 37210 (the “City Cemetery”)

10. The area in which Petitioner is proposing for the Burial to be relocated, the City Cemetery, is on property owned by Metro, which is described and depicted on Exhibit C, attached hereto and incorporated herein by reference (the “Relocation Site”).

11. The proposal of the Petitioner for the removal and relocation of the Burials that have been recovered will be presented to the Division of Archaeology and representatives of Metro. Petitioner presents the Affidavit of Kelly Hockersmith in support of the allegations of this Petition. This Affidavit is attached hereto as Exhibit D and incorporated herein by reference.

WHEREFORE, the Petitioner respectfully requests that the following relief be granted:

1. That notice be served on “interested parties” by Order of Publication to unknown Defendants of the existence of the artifacts and remains described herein.

2. That, after publication of notice as described above and following a hearing in this cause, the Court issue a Final Order that: (i) authorizes the Petitioner to remove the known Burials that have been recovered and to rebury them at the Relocation Site in accordance with applicable law; (ii) terminates the use of the Property as a burial ground or cemetery in accordance with Tenn. Code Ann. § 46-4-104; and (iii) terminates all rights and easements to use the Property

as a burial ground and all rights and easements incident or appurtenant thereto in accordance with Tenn. Code Ann. § 46-4-104.

3. That the Petitioner have such other and further general relief as the Court may deem just and proper.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

By: /s/ Junaid Odubeko
James L. Murphy, III (No. 9589)
Junaid Odubeko (No. 23809)
Mike Stephens (No. 36949)
1600 Division Street, Suite 700
Nashville, Tennessee 37203
Tel: (615) 244-2582
Fax: (615) 252-6380
jmurphy@bradley.com
jodubeko@bradley.com
mstephens@bradley.com

Attorneys for Petitioners

Exhibit A

Description of the Property

Land in Davidson County, Tennessee, being Lot No. 1 and Lot No. 2 on the Subdivision of the William Bass Property of record as Instrument No. 20051116-0138406, Register's Office for Davidson County, Tennessee, to which plat reference is hereby made for a more complete and accurate legal description.

Being the same property conveyed to Nashville Phase II Property Holder LLC, a Delaware limited liability company, by deed of record as Instrument No. 20190312-0022494, Register's Office for Davidson County, Tennessee.

Exhibit B

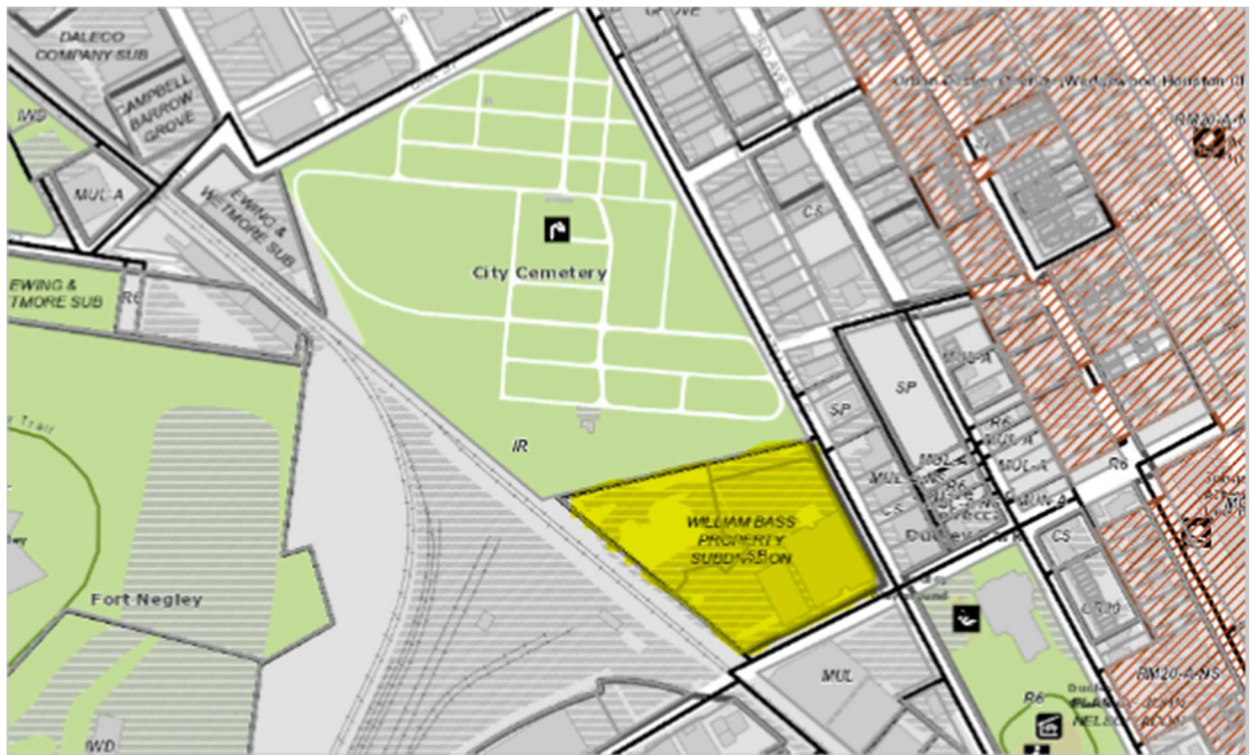
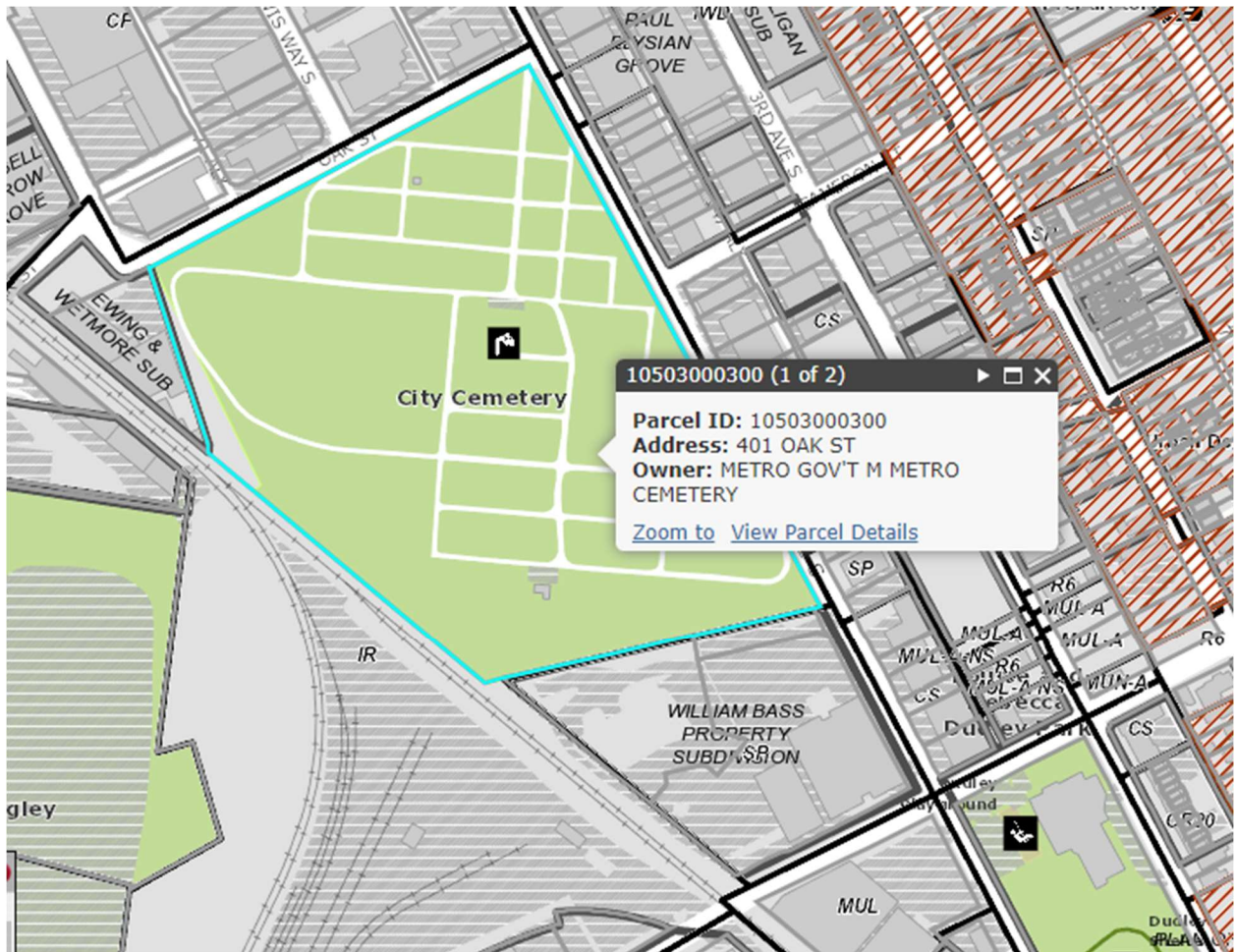


Exhibit C



**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
20TH JUDICIAL DISTRICT, DAVIDSON COUNTY**

**AJ CAPITAL MANAGEMENT, LLC d/b/a)
AJ CAPITAL PARTNERS and)
NASHVILLE PHASE II PROPERTY)
HOLDER LLC)**

Petitioners,)

No. _____

v.)

**ALL INTERESTED PERSONS HAVING)
ANY RIGHT OR EASEMENT OR)
OTHER INTEREST, RIGHT IN, OR)
INCIDENT OR APPURTENANT TO)
CERTAIN HUMAN REMAINS)
LOCATED ON A PORTION OF THE)
PROPERTY FORMERLY IDENTIFIED)
AS 1131 4TH AVENUE SOUTH,)
NASHVILLE, TN 37210 (TAX MAP 105-)
03, PARCEL 331, DAVIDSON COUNTY)
ASSESSOR'S OFFICE) AND AS 1137 4TH)
AVENUE SOUTH, NASHVILLE, TN)
37210 (TAX MAP 105-03, PARCEL 349,)
DAVIDSON COUNTY ASSESSOR'S)
OFFICE), AND CURRENTLY)
IDENTIFIED AS 0 4TH AVENUE SOUTH,)
NASHVILLE, TN 37210 (PARCEL ID)
105030Y00100CO, DAVIDSON COUNTY)
ASSESSOR'S OFFICE), 0 4TH AVENUE)
SOUTH, NASHVILLE, TN 37210)
(PARCEL ID 105030Y002, DAVIDSON)
COUNTY ASSESSOR'S OFFICE) AND 0)
4TH AVENUE SOUTH, NASHVILLE, TN)
37210 (PARCEL ID 105030Y90000CO,)
DAVIDSON COUNTY ASSESSOR'S)
OFFICE) AND CONVEYED TO)
NASHVILLE PHASE II PROPERTY)
HOLDER LLC, BY SPECIAL DEED OF)
RECORD AT INSTRUMENT NO.)
20190312-0022494, REGISTER'S OFFICE)
FOR DAVIDSON COUNTY,)
TENNESSEE,)**

Respondents.)

EXHIBIT D

AFFIDAVIT OF KELLY HOCKERSMITH

Comes now the affiant, having been duly sworn, hereby deposes and states as follows:

1. My name is Kelly Hockersmith. I am over eighteen (18) years of age and have personal knowledge of the facts stated herein, which are true and correct.

2. I am a professional archaeologist and the Senior Project Manager and Mountain Region Sector Lead for SEARCH, Inc. ("SEARCH"), a cultural resources firm that deploys the full spectrum of cultural heritage services worldwide. I have over twenty (20) years of experience in cultural resource management and have participated in all phases of historic archaeological investigation throughout the Midwest, Southeast, and Mid-Atlantic United States, authoring over hundred (100) technical reports.

3. I am personally familiar with the property described in the Petition to Relocate Remains and Terminate Burial Grounds filed by Petitioners, AJ Capital Management, LLC d/b/a AJ Capital Partners and Nashville Phase II Property Holder LLC, (the "Property").

4. In January 2022, SEARCH was engaged by AJ Capital to provide archaeological monitoring services related to AJ Capital's development of the Property. I have been the Senior Project Manager for the SEARCH archaeological team, and I have overseen all archeological monitoring activities on the Property.

5. On May 16, 2022, while performing archaeological monitoring for the excavation of a 5.5-foot caisson, an archaeological monitor, Henry Alexander, from SEARCH identified human skeletal remains and fragments of thin wood, likely from an associated coffin. The human remains were recovered from fourteen (14) to eighteen (18) feet below ground surface. Mr. Alexander stopped the excavation of the caisson and immediately notified me. I then notified

the Tennessee Department of Archaeology and spoke with the State Archaeologist, Mr. Phillip Hodge. I arrived on site approximately two hours after the discovery and confirmed that the recovered skeletal material was human remains. Mr. Aaron Deter-Wolf with the Tennessee Division of Archaeology arrived on site shortly after me. Mr. Deter-Wolf notified the Davidson County Medical Examiners Office of the discovery, and I notified the Metropolitan Police. For the next week, Mr. Alexander and I shifted through the backdirt from the excavation of the caisson to recover any additional human remains.

6. On June 7, 2022, while performing archaeological monitoring for the excavation of a different 5.5-foot caisson, Mr. Alexander identified additional human skeletal remains and fragments of thin wood, likely from an associated coffin. The human remains and wood coffin fragments were recovered fifteen (15) to seventeen (17) feet below ground surface. Mr. Alexander stopped the excavation of the caisson and immediately notified me of the discovery and began to shift the backdirt from the caisson excavation. I immediately notified the State Archaeologist, Phillip Hodge, of the discovery. Following the discovery, Mr. Alexander was joined on site by another SEARCH archaeologist who specializes in osteology and forensic archaeology. Mr. Alexander and Ms. Voas shifted the backdirt to recover any additional human remains.

7. AJ Capital has completed the excavation of fifty-three (53) 4-foot-to-6-foot-wide caissons across approximately 0.68 acres of the Property. Human remains were encountered within only two caissons at depths from fourteen (14) to eighteen (18) feet below ground surface. Based on the coverage provided by the caisson construction and concurrent archaeological monitoring, it is my opinion that the two graves likely represent isolated burials and not a more extensive cemetery distribution.

8. Based on the recovery of wooden casket remains with metal cut nails and property records research, I estimate that both sets of the recovered human remains date to the early nineteenth century and are not of Native American origin.

9. Since the remains found on the Property are unmarked, the identities of the interested persons having any right or easement or other interest, right in, or incident or appurtenant to the burial ground located on the Property are unknown and not ascertainable upon diligent historic research.

10. Because only a portion of the human remains were recovered from each burial site, the remaining unexposed portion of each grave have been avoided and preserved in place.

11. In my opinion, preservation-in-place for the unexcavated human remains is the most appropriate action to provide due care and decency in this circumstance. Preservation-in-place is an acceptable practice, and considering the depth, removing the remaining portions of the two graves would pose a health and safety concern to excavate them appropriately.

12. Currently, the recovered human remains are in my possession and maintained in a climate-controlled secured location.

13. I will work with representatives from the Nashville City Cemetery to locate a suitable portion of its cemetery for the reinterment of the recovered human remains. Should the Nashville City Cemetery be unable to find a suitable portion of its cemetery for the reinterment of the recovered human remains, there are a number of other cemeteries located within Davidson County, Tennessee I believe are suitable and will be willing and able to reinter the recovered human remains.

14. I will assist the Nashville City Cemetery, or another suitable cemetery located within Davidson County, to ensure that the remains are appropriately reinterred. All work will be done using due care and decency by qualified archaeological specialists hired by the Petitioners.

FURTHER THIS AFFIANT SAITH NOT.


KELLY HOCKERSMITH

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Sworn to and subscribed before me this 4th day of August, 2022.


Notary Public
My Commission Expires May 19 2026

